EVIDENCE — CHARACTER — PROOF OF REPUTATION OF DISORDERLY HOUSES. — In a prosecution for keeping a disorderly house, the state introduced evidence of the reputation of the house in the community. *Held*, that such evidence is admissible. *Wilson* v. *State*, 136 S. W. 447 (Tex., Ct. Cr. App.).

Much confusion exists in the cases as to what the real issue in these prosecutions is, *i. e.*, whether the fact to be proved is fame or reputation, or actual habit or character. *Martin* v. *State*, 56 So. 64 (Ala., App. Ct.). See 2 WIGMORE, EVIDENCE, § 1620. If reputation is part of the crime, then certainly evidence of reputation is admissible. *State* v. *Thomas*, 47 Conn. 546; *Carroll* v. *State*, 111 Pac. 1021 (Okl., Ct. Cr. App.). See 1 WIGMORE, EVIDENCE, § 78. But where actual habit or character is in issue, the authorities divide. Evidence of reputation then becomes mere hearsay. However, in a majority of jurisdictions, such evidence is admitted. *In re Fong Yuk*, 8 Brit. Col. 118; *Drake* v. *State*, 14 Neb. 535. In a very respectable minority of states the evidence is logically excluded as hearsay not falling within the recognized exceptions to the hearsay rule. *State* v. *Boardman*, 64 Me. 523; *Henson* v. *State*, 62 Md. 231. In many of these states, such evidence is now made admissible by special legislation relating to bawdy houses. CODE OF IA., 1897, § 4944; WIS. STATS., 1898, § 4581*g*; MD. PUB. GEN. LAWS, 1904, Art. XXVII, § 18. These statutes have been held constitutional. *State* v. *Haberle*, 72 Ia. 138. The Pennsylvania courts, while not admitting reputation to prove the character of houses generally, make an exception in case of bawdy houses. *Commonwealth* v. *Soo Hoo Doo*, 41 Pa. Super. Ct. 249. The reason for this, namely, the difficulty of getting witnesses to testify to facts within their own knowledge in cases of this nature, is well stated in an earlier Pennsylvania case. See *Commonwealth* v. *Murr*, 7 Pa. Super. Ct. 391, 393. The same argument is advanced by text writers for such an exception to the hearsay rule. See 2 WIGMORE, EVIDENCE, § 1620.

EVIDENCE — RES GESTAE — TRAIN-DISPATCHER'S SHEET. — On the issue of the negligent speed of the defendant's train by which the plaintiff was injured between T. and J., after notice and failure to produce the train-dispatcher's sheet, the plaintiff was allowed to prove the running time of the train between T. and J. on the day of the accident, as it appeared on the sheet, by the testimony of a witness who had seen it within a week in the defendant's office in B. Defendant's employees testified to the existence and nature of such a sheet. Neither the telegraph operators at T. and J. who reported the data, nor the dispatcher at B. who made the entries, were produced or accounted for. *Held*, that the evidence is admissible, against the defendant, "as part of the *res gestæ* of the passing of the train by the stations." *St. Louis & Santa Fé R. Co.* v. *Sutton*, 55 So. 989 (Ala.).

Declarations of an agent are admissible against his principal, if made within the scope of his authority. *United States* v. *Gooding*, 12 Wheat. 460. The frequent misinterpretation of this rule in the phraseology of *res gestæ*, appropriate only to a distinct criterion of admissibility, has caused an unfortunate confusion strikingly illustrated by the principal case. *Cf. Texas, etc. Ry. Co.* v. *Lester*, 75 Tex. 56. The sheet seen by this witness was circumstantially identified with the one shown to be kept by the defendant's agents. Its admissibility against the defendant, therefore, should rest upon its being an admission. *Lemen* v. *Kansas City Southern Ry. Co.*, 132 S. W. 13 (Mo.). Apart from this, it could be used by the dispatcher to refresh recollection, if the original observers also testified. *The Mayor, etc. of New York* v. *Second Ave. R. Co.*, 102 N. Y. 572; *Chicago Lumbering Co.* v. *Hewitt*, 64 Fed. 314. Authorities cited by the principal case have indeed held that the mechanical medium of such reports and their life-and-death importance rendered the operator's testi-